



Louisiana Oyster Task Force Meeting

John Tesvich, Chairman

Wednesday August 3, 2011 10 a.m.

Lindy C. Boggs Conference Center, 2045 Lakeshore Drive, room 206, New Orleans, La

AGENDA

The Louisiana Oyster Task Force will hold a meeting on Wednesday, August 3, 2011 at 10 a.m. The meeting will take place in room 206 of the Lindy C. Boggs Conference Center, 2045 Lakeshore Drive, New Orleans, La. The agenda for the meeting is below.

- I. Roll Call**
- II. New Business**
 - A. Cultch plant locations**
 - B. Oyster substitution/moratorium legislation**

Special Oyster Task Force Meeting

Wednesday, August 3, 2011

Lindy Boggs Conference Center

Meeting called to order at 10:05 a.m.

Present: Patrick Banks, Glenn Cambre, Wilbert Collins, Dan Coulon, Byron Encalade, Jakov Jurisic, Steve McManus in for Major Sammy Martin, Ralph "Buddy" Pausina, Brad Robin and John Tesvich.

Absent: Shane Bagala, Dana Brocato, David Deere, Karl Morgan, Al Sunseri, Sam Slavich, Peter Vujnovich, Mike Voisin and Jerome Zeringue.

I. Motion by Brad Robin to continue with half moon planting, second by Byron Encalade. Motion carries.

II. Motion by Wilbert Collins to put \$4 million towards rehabilitation of oyster reeds in most affected areas through alternative reef projects, specifically have boats till reefs. Second by Byron Encalade.

III. Motion that cultch plants go on existing hard bottom and reef formations. Motion by Jakov, second by Buddy Pausina. Motion carries.

IIII. Motion by Dan Coulon that Wildlife and Fisheries investigate a lower density cultch planting method to get the most coverage. WLF will determine the exact density. Second by Wilbert Collins.

V. Motion by Byron that funds be directed to areas most affected by BP Oil Spill. Remove Calcasieu Lake, Sabine Lake, Lake Chien and amend Sister Lake to \$1.23 million. If \$4 million for rehabilitation isn't approved then those funds should be spent on cultch plants in Coastal Study Areas 1, 2 and 3 that are currently in place.

\$1 million in CSA 1

\$2 million in CSA 2

\$1 million in CSA 3

Second by Jakov Jurisic, motion carries.

VI. In reference to WLF proposed locations, Mississippi Sound, Lake Fortuna and Barataria Bay, Brad Robin makes a motion that cultch plant in Mississippi Sound area be in Drum Bay or Morgan Harbor. Lake Fortuna should be kept as is. Barataria Bay should be amended to Hackberry Bay. If the \$4 million funds are also awarded to cultch plants then plants should be in the following areas:

CSA I- 3 mile bay (\$ 1 million)

CSA 2-Pelican Island/Iron Banks, California Bay/South Black Bay area. (\$ 2 million)

CSA 3- Hackberry Bay (\$1 million)

Second by Wilbert Collins, motion carries.

Absent: Shane, Dana, David, Karl, Al, Sam, Peter, Mike V, Jerome
Present - Glen, Patrick, Wilbert, Dan, Byron, Jakob, Steve McManus
in for Maj. Sammy Markin, Budd, Brad, John T.

La. Oyster Task Force

August 3, 2011 Special Meeting

Topic Agenda for Proposed Cultch Plants on Public Seed Grounds

- 1) Discuss Funding that is Available for Oyster Reef Rehabilitation
- 2) Discuss Previously Planned but Postponed Cultch Plants
- 3) Discuss Alternative Methods of Reef Rehabilitation. Decide whether to Recommend funding of Alternative Reef Rehabilitation Projects
- 4) Discuss Variations in Cultch Density for Rehabilitation of Natural Oyster Reefs
- 5) Discuss Including Incentives (or Requirements) for Contracting with La. Oyster Vessel Owners for Planting Cultch and Reef Rehabilitation Projects
- 6) Discuss the Division of Funds According to CSA's
- 7) Discuss Specific Potential Sites Within Each CSA
- 8) Prioritize Potential Reef Rehabilitation Project Sites
- 9) Establish an Executive Committee for Follow Through

2. Motion to continue w/ half moon planting. Motion by Brad, second by Byron. Motion carries.

3. Motion by Wilbert to put \$4 mill towards rehabilitation of oyster reefs in most affected areas through alternative reef projects, specifically have seats till reefs. Second by Byron. Motion carries.

4. Motion that cultch plants go on existing hard bottom & reef formations. Motion by Budd Jakob, second by Budd. Motion carries.

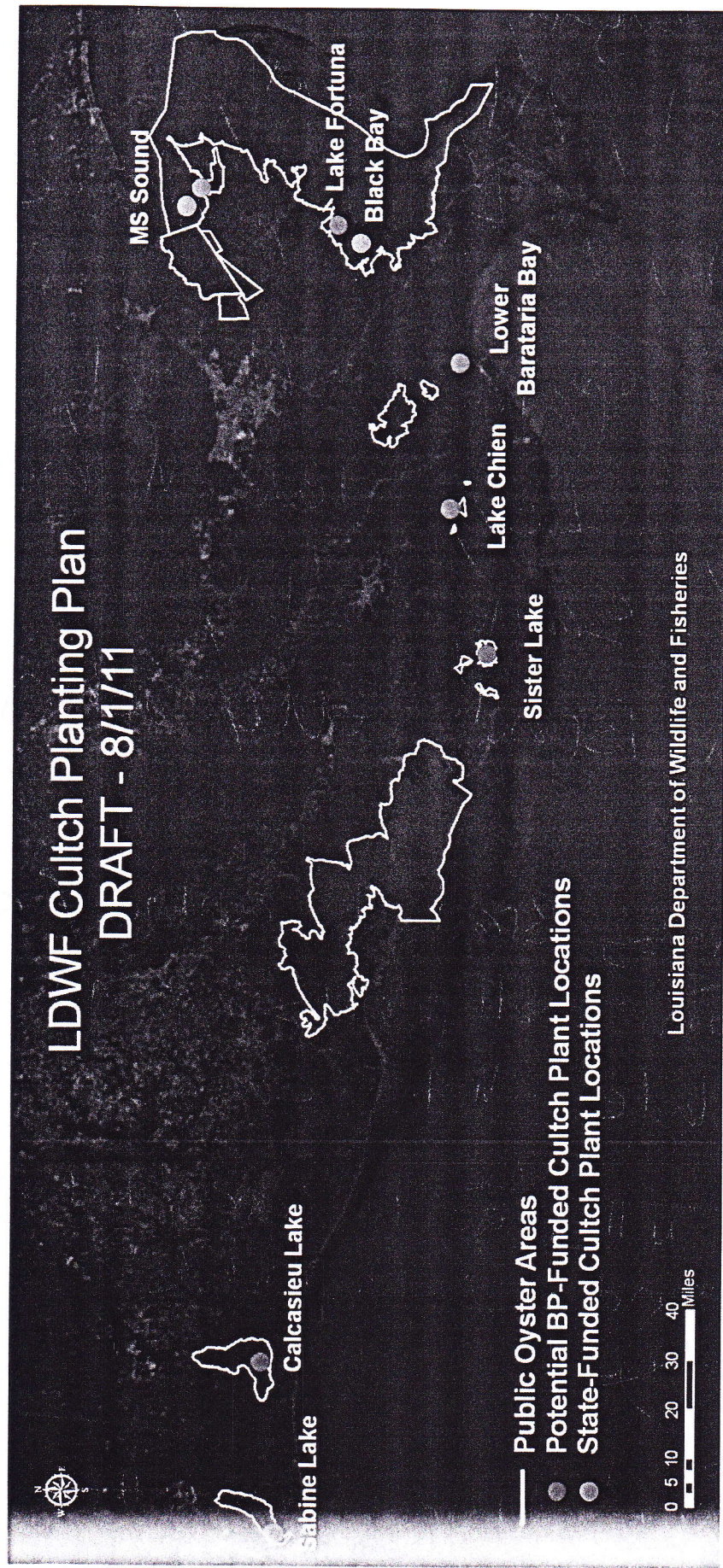


Figure 1. Map of proposed cultch-planting locations (approximate) for oyster rehabilitation efforts. Only the Mississippi Sound state-funded cultch plant is under contract as of August 1, 2011.

SLS _____

ORIGINAL
Draft 7/26/11

Regular Session, 2012

SENATE BILL NO. _____

BY SENATOR _____

FISH/FISHING. Provides relative to oysters leases. (gov sig)

AN ACT

To amend and reenact R.S. 56:423(A) and (B)(1), and to enact R.S. 56:428(D) and Subsection D of Section 2 of Act No. 808 of the 2008 Regular Session of the Legislature, relative to oyster leases; to provide for substitution for oyster leases under certain circumstances; to provide relative to liability under certain circumstances; to provide a procedure for ownership claims to certain oyster leases; to provide certain terms, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 56:423(A) and (B)(1) are hereby amended and reenacted and R.S. 56:428(D) is hereby enacted to read as follows:

§423. Property rights, larceny or other public offenses concerning; leases heritable and transferable; adjudication of claims

A. A lessee shall enjoy the exclusive use of the water bottoms leased and of all oysters and cultch grown or placed thereon, subject to the restrictions and regulations of this Subpart and Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

(1) This exclusive use of water bottoms is subordinate to the rights or responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take any action in furtherance of coastal protection, conservation, or restoration. For purposes of this Subpart, "coastal protection, conservation, or restoration" means any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950. **The lessee shall hold the permittee, the state, and any political subdivision of the state, and all or any agency or agent thereof free and harmless from any claim for any damage, cost, expense, loss, or**

1 inconvenience whatsoever arising from damage caused by coastal protection,
2 conservation, or restoration, except as provided in R.S. 56:427.1.
3

4 (2) This exclusive use of water bottoms is subordinate to the rights of any person to
5 engage in any oil or gas exploration and production activity permitted by a drilling
6 permit or a coastal use permit granted pursuant to R.S. 49:214.30, or the continued
7 development or maintenance of that permitted activity, if the application for the
8 permit was filed before the date that the original oyster lease application was filed
9 pursuant to R.S. 56:427, and to the extent of the area covered by the permit. The
10 lessee shall hold the permittee, the state, any political subdivision of the state, or any
11 agency or agent thereof free and harmless from any claim for any damage, cost,
12 expense, loss, or inconvenience whatsoever arising from damage caused by oil or gas
13 exploration and production permitted by a drilling permit or a coastal use permit
14 granted pursuant to R.S. 49:214.30, or the continued development or maintenance
15 of that permitted activity, if the application for the permit was filed before the date
16 that the lessee's original oyster lease application was filed pursuant to R.S. 56:427,
17 and to the extent of the area covered by the permit. This Paragraph shall not apply
18 to any claim for damages outside of the permitted area, or to any lease issued prior
19 to the effective date of this Paragraph, any lease reissued pursuant to Section 2.B. of
20 Act No. 808 of the 2008 Regular Session of the Legislature, any expansion of an
21 existing lease authorized pursuant to Section 2.C. of Act No. 808 of the 2008 Regular
22 Session of the Legislature, any lease issued pursuant to a lease application pending
23 on March 7, 2002, or any substitution lease issued pursuant to Section 2 of the Act
24 of the Legislature enacting this Paragraph.
25

26 B. (1) A lessee of oyster beds or grounds who has obtained, recorded, and marked his lease
27 in compliance with the law shall have the right to maintain an action for damages against
28 any person, partnership, corporation, or other entity causing wrongful or negligent injury
29 or damage to the beds or grounds under lease to such lessee.
30

31 (a) However, no lessee shall have any right to maintain any action against the
32 state, any political subdivision of the state, the United States, or any agency,
33 agent, or contractor, or employee thereof for any claim arising from any project,
34 plan, act, or activity in relation to coastal protection, conservation, or restoration,
35 except as provided in R.S. 56:427.1.
36

37 (b) No lessee shall have any right to maintain any action against any person
38 arising from any oil or gas exploration and production activity permitted by
39 a drilling permit or a coastal use permit granted pursuant to R.S. 49:214.30,
40 or the continued development or maintenance of that permitted activity, if
41 the application for the permit was filed before the date that the lessee's
42 original oyster lease application was filed pursuant to R.S. 56:427, and to the
43 extent of the area covered by the permit. This Subparagraph shall not apply
44 to any claim for damages outside of the permitted area, or to any lease issued
45 prior to the effective date of this Subparagraph, any lease reissued pursuant
46 to Section 2.B. of Act No. 808 of the 2008 Regular Session of the Legislature,

1 any expansion of an existing lease authorized pursuant to Section 2.C. of Act
2 No. 808 of the 2008 Regular Session of the Legislature, any lease issued
3 pursuant to a lease application pending on March 7, 2002, or any
4 substitution lease issued pursuant to Section 2 of the Act of the Legislature
5 enacting this Subparagraph.

6 * * *

7
8
9 § 428. Commencement and duration of lease; renewal; fixing of rental rates

10
11 * * *

12
13 **D. Notwithstanding the provisions of R.S. 56:423(D), a private person claiming ownership**
14 **of property subject to an oyster lease pursuant to this Subpart may notify the**
15 **administrator of the state land office and the secretary of the Department of Wildlife and**
16 **Fisheries that he contests ownership of such property. The relief available pursuant to and**
17 **the results of such a notice of contest are limited to those in this Subsection.**

18
19 (1) The notice of contest shall be in writing and delivered by certified mail, return
20 receipt requested to both the administrator and the secretary. The notice shall
21 identify with specificity the boundaries of the leased property which is being
22 contested. The notice shall explain the basis upon which the contesting party asserts
23 ownership, and identify the oyster lease he believes has been granted for the
24 contested property and the lessee if known. The contesting party shall attach copies
25 of all deeds of ownership and other documents upon which he bases his assertion of
26 ownership.

27
28 (2) The notice of contest must be received by the administrator and the secretary at
29 least three years before the expiration of the current lease of the contested property.

30
31 (3) Upon receipt of a notice of contest meeting the requirements of this Subsection,
32 the secretary shall advise the lessee of record with the department for the lease
33 within the area of contested ownership that ownership of the property covered by
34 the lease has been contested. The secretary shall advise the lessee, in writing and
35 delivered by certified mail, return receipt requested within sixty days after receiving
36 the notice of contest or at least three years before the expiration of the lease
37 covering the area of contested ownership, whichever is later.

38
39 (4) Upon receiving a notice of contest meeting the requirement of this Subsection,
40 the administrator shall review the ownership status of the contested property, and
41 shall advise the secretary as to whether and as to which portion of the contested
42 property the state of Louisiana claims ownership. To the extent that the state does
43 not claim ownership of the contested property, the secretary shall not renew the
44 lease. To the extent that the state does claim ownership of contested property, the
45 secretary may renew the lease in accordance with this Subpart. The secretary shall
46 notify the lessee under the affected lease, in writing and delivered by certified mail,

1 return receipt requested, as to the determination regarding state ownership by the
2 administrator and the action to be taken by the secretary pursuant to this
3 Subsection.
4

5 (5) The Governor's Advisory Commission on Coastal Protection, Restoration and
6 Conservation shall, in consultation with the Louisiana Sea Grant College Program,
7 engage in a comprehensive analysis of the state's oyster leasing program with a goal
8 of increasing the total actively harvested oyster lease acreage. This analysis shall
9 include but not be limited to the statutory, regulatory, procedural, and fiscal
10 components of the program and options for improvements to its management,
11 operation, and financial basis. Within two years from the effective date of this
12 Subsection, the Commission shall make a comprehensive recommendation to the
13 Louisiana Wildlife and Fisheries Commission for improvements to the program,
14 identifying the statutory, regulatory, procedural, and fiscal changes necessary and
15 appropriate to such improvement.
16

17 Section 2. Subsection D of Section 2 of Act No. 808 of the 2008 Regular Session of the
18 Legislature is hereby enacted to read as follows:
19

20 * * *

21
22 **D. The rules for final lifting of the moratorium shall allow the leaseholder of record for an**
23 **oyster lease from the state that was in effect on April 20, 2010, and that was significantly**
24 **impacted as a result of the Deepwater Horizon oil spill, including operation of freshwater**
25 **diversions in response to the spill, to select and obtain a new lease in substitution for the**
26 **impacted lease.**
27

28 (1) The opportunity to select a substitution lease shall be provided for a limited
29 period of time, and shall become available for exercise after resolution of the rights
30 of first refusal provided by Section 2.B. hereof, lease applications pending on March
31 7, 2002, and the lease expansions if any authorized by Section 2.C. hereof.
32

33 (2) The rules for substitution leases provided for in this Section shall:
34

35 (a) Provide a methodology and measure for the Department of Wildlife and
36 Fisheries to determine leases that were significantly impacted for purposes of
37 this Act:
38

39 (b) Provide a methodology for determining the size of substitution leases in
40 relation to the size of the significantly impacted lease;
41

42 (c) Provide for a leaseholder who elects to obtain a substitution lease to retain
43 his existing lease for four years, to allow for orderly transition to the
44 substitution lease. At the end of the transition period, the original lease shall
45 be automatically terminated;
46

1 (d) Preclude selection of substitution leases in areas that are determined to be
2 significantly impacted pursuant to the methodology discussed in Section 2.A.,
3 or in areas within 1500 feet of any area covered by a drilling permit or a
4 coastal use permit granted pursuant to R.S. 49:214.30; and
5

6 (e) Treat substitution leases as new leases for all purposes, except as
7 otherwise specifically provided by law.
8

9 (3) The Louisiana Wildlife and Fisheries Commission shall make a certain amount
10 of public oyster seed grounds available for substitution leases. The Commission
11 shall have sole discretion to determine the amount and location of the seed grounds
12 to be made available for this purpose.
13

14 (4) Nothing herein shall in any way diminish or otherwise affect any claim that any
15 oyster lessee or other person may otherwise possess arising from the Deepwater
16 Horizon oil spill or the response thereto.
17

18 Section 3. This Act shall become effective upon signature by the governor or, if not signed by
19 the governor upon expiration of this time for bills to become law without signature by the
20 governor, as provided by Article III, Section of the Constitution of Louisiana. If vetoed by the
21 governor and subsequently approved by the legislature, this Act shall become effective on the
22 day following such approval.



Oyster Rehabilitation Through Cultch Planting

Cultch Planting Plans

1. State-Funded Projects – Approximately \$4 million (Table 1, Figure 1)

a. Mississippi Sound

This project is currently on hold due to the freshwater inundation caused by the Spring 2011 high Mississippi River and freshwater release through the Bonnet Carré Spillway. This project was awarded to Suncoast Contracting for a bid price of \$47.15 per cubic yard. The current contract for this project calls for 35,625 cubic yards to be placed at a total cost of \$1,679,718.75 on approximately 165 acres. It is anticipated that this project will commence in early September 2011 at a location just south of Halfmoon Island in Mississippi Sound.

b. Black Bay

This project has not yet been approved and put out for public bid, although we anticipate such in the coming weeks. If not approved by August 10, it will not have time to be placed on bid for a September start date. This project is planned to be an approximately \$2.3 million project utilizing 32,800 cubic yards of cultch materials spread over 165 acres. Although the project location has not been finalized, it will be located somewhere in the Black Bay area.

2. BP-Funded Projects – Approximately \$11 million (Table 2, Figure 1)

a. Mississippi Sound

This project will plan to rehabilitate oyster habitat on approximately 200 acres of existing oyster habitat at a cost of approximately \$2.3 million. Due to the depth of water in this area (9 to 12 feet) and proximity to contractor staging areas, it is anticipated that the cost per cubic yard would be approximately \$58.

b. Lake Fortuna

This project will plan to cover approximately 200 acres of existing oyster habitat at a cost of \$2.8 million. This location is near the Black Bay area in the Breton Sound basin, although its location is farther north and may be somewhat less susceptible to freshwater impacts from diversions and the Mississippi River. Due to the shallowness of the area (6 to 8 feet) and the large distance from contractor staging areas, it is anticipated that this project would cost approximately \$70 per cubic yard.

c. Barataria Bay

This project location is in lower Barataria Bay on the existing Barataria Bay Public Oyster Seed Ground. Cultch planting would cover approximately 65 acres at a total project cost of \$650,000. As this location is in relatively deep water (9 to 11 feet) with deepwater access from contractor staging areas (Barataria Waterway), it is anticipated that the cost per cubic yard for cultch material would be approximately \$50.

d. Lake Chien

This project is located in the existing Lake Chien Public Oyster Seed Ground below Point au Chien, Louisiana in Terrebonne Parish and would cover approximately 50 acres at a total cost of \$750,000. The cost per cubic yard for this project is anticipated to be high (approximately \$75 per cubic yard) as this

location is relatively shallow (5 to 7 feet) and contractors must cross private oyster leases to access this location. Contractors for past projects in this area have indicated that they must bid this location at a higher rate due to liability concerns over crossing private oyster leases.

e. *Sister Lake*

This project will be located in the Sister Lake Public Oyster Seed Reservation. This lake is highly productive, but logistically difficult for contractors to work in due to its long distance from staging areas and shallow depths (4 to 6 feet). This project is anticipated to cover approximately 200 acres at a total cost of \$3 million. Due to the shallow depths, contractors will have to “light-load” barges, which means that they cannot put much cultch material on any one barge causing the contractor to handle the material multiple times (which drives up cost). It is anticipated that the cost per cubic yard of this cultch plant will be approximately \$75.

f. *Calcasieu Lake*

This project will be located in the lower portion of the lake within the traditional commercial harvest areas. It will cover approximately 50 acres at a project cost of \$800,000. Due to the shallow water depths (4 to 6 feet), it is anticipated that this project will cost approximately \$80 per cubic yard.

g. *Sabine Lake*

This project will be located outside of existing reef areas and will serve to establish new reef on approximately 40 acres at a cost of \$680,000. Due to the long distance from contractor staging areas in Louisiana and the unknown nature of cultch planting in this area (no cultch plant has ever been attempted here), it is anticipated that the cost per cubic yard will be high (approximately \$85).

Table 1. State-funded cultch planting projects for oyster rehabilitation efforts. The Mississippi Sound project is currently under contract and is anticipated to begin in September 2011. The Black Bay project is planned and has been publicly announced, but not yet approved for funding, placed on bid, or under contract.

Location	Parish	Size	Planting Rate	Total yd ³	\$/yd ³	Total Cost
Mississippi Sound	St. Bernard	165 acres	200 yd ³ /acre	35,625	\$47.15	\$1,679,718.75
Black Bay	Plaquemines	165 acres	200 yd ³ /acre	32,800	\$70.00	\$2,296,000.00
				Total		\$3,975,718.75

Table 2. BP-funded cultch planting projects for oyster rehabilitation efforts. All projects are currently proposed, but not yet approved or under contract.

Location	Parish	Size	Planting Rate	Total yd ³	\$/yd ³	Total Cost
Mississippi Sound	St. Bernard	200 acres	200 yd ³ /acre	40,000	\$58.00	\$2,320,000.00
Lake Fortuna	St. Bernard	200 acres	200 yd ³ /acre	40,000	\$70.00	\$2,800,000.00
Barataria Bay	Jefferson	65 acres	200 yd ³ /acre	13,000	\$50.00	\$650,000.00
Lake Chien	Terrebonne	50 acres	200 yd ³ /acre	10,000	\$75.00	\$750,000.00
Sister Lake	Terrebonne	200 acres	200 yd ³ /acre	40,000	\$75.00	\$3,000,000.00
Calcasieu Lake	Cameron	50 acres	200 yd ³ /acre	10,000	\$80.00	\$800,000.00
Sabine Lake	Cameron	40 acres	200 yd ³ /acre	8,000	\$85.00	\$680,000.00
				Total		\$11,000,000.00



Figure 1. Map of proposed cultch-planting locations (approximate) for oyster rehabilitation efforts. Only the Mississippi Sound state-funded cultch plant is under contract as of August 1, 2011.

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Lake Fortuna	St. Bernard	200 acres	200 yd ³ /acre	40,000	\$70.00	\$2,800,000.00
Barataria Bay	Jefferson	65 acres	200 yd ³ /acre	13,000	\$50.00	\$650,000.00
Lake Chien	Terrebonne	50 acres	200 yd ³ /acre	10,000	\$75.00	\$750,000.00
Sister Lake	Terrebonne	200 acres	200 yd ³ /acre	40,000	\$75.00	\$3,000,000.00
Calcasieu Lake	Cameron	50 acres	200 yd ³ /acre	10,000	\$80.00	\$800,000.00
Sabine Lake	Cameron	40 acres	200 yd ³ /acre	8,000	\$85.00	\$680,000.00
				Total		\$11,000,000.00